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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MARIA TREJO DE ZAMORA and,  
ISELA GOMEZ-DEHINES

Case No.: 2:12-cv-01357-MMD-CWH

Plaintiff,

vs.

AUTO GALLERY, INC.

Defendant(s).

**MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, MARIA TREJO DE ZAMORA and ISELA GOMEZ-DEHINES, by and through their counsel, JILL C. DAVIS, Esq. and Michael R. Joe, Esq. of the Legal Aid Center of Southern Nevada, Inc., for their Complaint against Defendant, AUTO GALLERY, INC., allege and state as follows:

**I. INTRODUCTION**

1. This Complaint arises out of the sale on credit of a 2004 Nissan Xterra, (VIN 5N1ED28T44C66010) from Defendant, AUTO GALLERY, INC., to Plaintiffs, MARIA TREJO DE ZAMORA and ISELA GOMEZ-DEHINES, on August 17, 2011. During the course of the August 17, 2011 transaction and thereafter, Defendant violated numerous state and federal statutes, engaged in fraudulent misrepresentation and converted Plaintiffs' personal property.

## II. LEGAL STANDARDS

Summary judgment is appropriate when there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). Summary judgment avoids unnecessary trials in cases in which the parties do not dispute the facts relevant to the determination of the issues in the case, or in which there is insufficient evidence for a jury to determine those facts in favor of the nonmovant. *Crawford-El v. Britton*, 523 U.S. 574, 600, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–50, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471–72 (9th Cir.1994). At bottom, a summary judgment motion asks whether the evidence presents a sufficient disagreement to require submission to a jury.

The principal purpose of Rule 56 is to isolate and dispose of factually unsupported claims or defenses. *Celotex Cop. v. Catrett*, 477 U.S. 317, 323–24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Thus, the rule functions to “ ‘pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.’ ” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting Fed.R.Civ.P. 56(e) advisory committee's note on 1963 amendments). Procedurally, under summary judgment practice, the moving party bears the initial responsibility of presenting the basis for its motion and identifying those portions of the record, together with affidavits, if any, that it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323; *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir.2001) (en banc). If the moving party meets its burden with a properly supported motion, the burden then shifts to the opposing party to present specific facts that show there is a genuine issue for trial. Fed.R.Civ.P. 56(e); *Anderson*, 477 U.S. at 248; *Auvil v. CBS “60 Minutes”*, 67 F.3d 816, 819 (9th Cir.1995).

1 A clear focus on where the burden of proof lies as to the factual issue in question is  
2 crucial to summary judgment procedures. Depending on which party bears that burden, the party  
3 seeking summary judgment does not necessarily need to submit any evidence of its own. When  
4 the opposing party would have the burden of proof on a dispositive issue at trial, the moving  
5 party need not produce evidence which negates the opponent's claim. *See e.g., Lujan v. National*  
6 *Wildlife Fed'n*, 497 U.S. 871, 885, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990). Rather, the moving  
7 party need only point to matters which demonstrate the absence of a genuine material factual  
8 issue. *See Celotex*, 477 U.S. at 323–24 (1986). (“[W]here the nonmoving party will bear the  
9 burden of proof at trial on a dispositive issue, a summary judgment motion may properly be  
10 made in reliance solely on the ‘pleadings, depositions, answers to interrogatories, and admissions  
11 on file.’ ”). Indeed, summary judgment should be entered, after adequate time for discovery and  
12 upon motion, against a party who fails to make a showing sufficient to establish the existence of  
13 an element essential to that party's case, and on which that party will bear the burden of proof at  
14 trial. *See id.* at 322. In such a circumstance, summary judgment must be granted, “so long as  
15 whatever is before the district court demonstrates that the standard for entry of summary  
16 judgment, as set forth in Rule 56(c), is satisfied.” *Id.* at 323.

19 To defeat summary judgment the opposing party must establish a genuine dispute as to a  
20 material issue of fact. This entails two requirements. First, the dispute must be over a fact(s) that  
21 is material, i.e., one that makes a difference in the outcome of the case. *Anderson*, 477 U.S. at  
22 248 (“Only disputes over facts that might affect the outcome of the suit under the governing law  
23 will properly preclude the entry of summary judgment.”). Whether a factual dispute is material is  
24 determined by the substantive law applicable for the claim in question. *Id.* If the opposing party  
25 is unable to produce evidence sufficient to establish a required element of its claim that party  
26 fails in opposing summary judgment. “[A] complete failure of proof concerning an essential  
27

1 element of the nonmoving party's case necessarily renders all other facts immaterial.” *Celotex*,  
2 477 U.S. at 322.

3 Second, the dispute must be genuine. In determining whether a factual dispute is genuine  
4 the court must again focus on which party bears the burden of proof on the factual issue in  
5 question. Where the party opposing summary judgment would bear the burden of proof at trial  
6 on the factual issue in dispute, that party must produce evidence sufficient to support its factual  
7 claim. Conclusory allegations, unsupported by evidence are insufficient to defeat the motion.  
8 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989). Rather, the opposing party must, by affidavit  
9 or as otherwise provided by Rule 56, designate specific facts that show there is a genuine issue  
10 for trial. *Anderson*, 477 U.S. at 249; *Devereaux*, 263 F.3d at 1076. More significantly, to  
11 demonstrate a genuine factual dispute the evidence relied on by the opposing party must be such  
12 that a fair-minded jury “could return a verdict for [him] on the evidence presented.” *Anderson*,  
13 477 U.S. at 248, 252. Absent any such evidence there simply is no reason for trial.  
14

15 The court does not determine witness credibility. It believes the opposing party's  
16 evidence, and draws inferences most favorable to that party. *See id.* at 249, 255; *Matsushita*, 475  
17 U.S. at 587. Inferences, however, are not drawn out of “thin air,” and the proponent must adduce  
18 evidence of a factual predicate from which the inference may be reasonably drawn. *American*  
19 *Int'l Group, Inc. v. American Int'l Bank*, 926 F.2d 829, 836 (9th Cir.1991) (Kozinski, J.,  
20 dissenting) (citing *Celotex*, 477 U.S. at 322). If reasonable minds could differ on material facts at  
21 issue, summary judgment is inappropriate. *See Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th  
22 Cir.1995). On the other hand, “[w]here the record taken as a whole could not lead a rational trier  
23 of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’ ” *Matsushita*, 475  
24 U.S. at 587 (citation omitted); *Celotex*, 477 U.S. at 323 (If the evidence presented and any  
25 reasonable inferences that might be drawn from it could not support a judgment in favor of the  
26  
27  
28

1 opposing party, there is no genuine issue). Thus, Rule 56 serves to screen cases lacking any  
2 genuine dispute over an issue that is determinative of the outcome of the case.

3  
4  
5 **III. UNCONTESTED MATERIAL FACTS**

6 In compliance with Local Rule ("LR") 56-1, the following is submitted as a concise  
7 statement of facts material to the disposition of this Motion that Defendants claim are not  
8 genuinely at issue:

9 1. On or about August 17, 2011, Plaintiffs, MARIA TREJO DE ZAMORA and  
10 ISELA GOMEZ-DEHINES (hereinafter, "Plaintiffs") became interested in purchasing a used  
11 vehicle on credit. (See Exhibit A Affidavits of Maria Trejo De Zamora and Isela Gomez-  
12 Dehines)

13  
14 2. On August 17, 2011, Plaintiffs traveled to Defendant, AUTO GALLERY, INC.,  
15 (hereinafter, "Defendant"), used car lot and saw a 2004 Nissan Xterra, (VIN  
16 5N1ED28T44C66010) (hereinafter, "the vehicle"). (See *id.*)

17 4. The sales person did not speak Spanish, but Plaintiffs spoke to an assistant who  
18 spoke some Spanish, and were presented with a retail installment sales contract in English. (See  
19 *id.*)

20  
21 5. Plaintiffs have limited ability to understand, speak or read English. (See *id.*)

22 6. Plaintiffs asked for the contract in Spanish but were not provided a retail  
23 installment sales contract Spanish. (See *id.*) (See also Exhibit B Retail Installment Sales  
24 Contract hereinafter ("RISC")).

25 7. The retail installment sales contract lists the vehicle's sale price as \$7,198.00,  
26 sales tax of \$582.30 for a total of \$7,771.30 and a finance charge of \$3,000.00 for a total price of  
27 \$10,771.30. (See *id.*)  
28

1           8.       The RISC states that there will be 15 monthly payments of \$718.20 beginning on  
2       September 1, 2011. (*See id.*)

3           9.       The RISC does not disclose the annual percentage rate, which is 52.662%. (*See*  
4       *id.*)

5           10.      Plaintiffs paid \$3,500 in cash as a down payment but were not given a receipt as  
6       Defendant refused to issue a receipt as Defendant stated it was to reduce the sales tax.

7           11.      The Plaintiffs detrimentally relied upon Defendants' failure to disclose the annual  
8       percentage rate of 52.662%, as this exceeds the standard used car dealership interest of 29.95%  
9       for a client with very poor credit, and Plaintiffs would not have purchased the vehicle if the  
10      annual percentage rate had been disclosed on the face of the contract. (*See id.*)

12          12.      The RISC was not offered in Spanish to the Spanish speaking Plaintiff. (*See id.*)

13          13.      The RISC omits material information in that the contract is not in the form and  
14      content required by NRS 97.299 and NAC 97.110 but rather is a BBI Autoform contract. (*See*  
15      Exhibit B- RISC.)

16          14.      On September 9, 2011 Plaintiffs made and Defendants accepted a late payment of  
17      \$1000.00 eight days late as evidenced by Receipt No. 163282, which indicates an outstanding  
18      balance of \$9,771.30. (*See* Exhibit A affidavits and Exhibit C – receipts)

19          15.      On October 17, 2012 Plaintiffs made and Defendants accepted a late payment of  
20      \$1,000.00 seventeen days late as evidenced by Receipt No. 163292, which indicates the  
21      outstanding balance of \$8,771.30. (*See id.*)

22          16.      On November 18, 2011 Plaintiffs made and Defendants accepted a late payment  
23      of \$1,000.00 seventeen days late as evidenced by Receipt No. 163302, which indicates the  
24      outstanding balance of \$7,771.30. (*See id.*)

25          17.      On January 18, 2012 Plaintiffs made and Defendants accepted a late payment of  
26      27

1 \$500.00 seventeen days late as evidenced by receipt No. 163316. (*See id.*)

2 18. On February 15, 2012 Plaintiffs made and Defendants accepted a late payment of  
3 \$4,200 fourteen days late as evidenced by receipt No. 163332, upon which this receipt reflects  
4 Auto Gallery's agreement to reduce the overall purchase price by \$1,500.00, indicating a balance  
5 due of \$1,571.30. (*See id.*)

6 19. On April 4, 2012 Plaintiffs made and Defendants accepted a late payment of  
7 \$500.00 four days late. (*See id.*)

8 20. Plaintiffs attempted to pay \$600 in May 2012 however the Auto Gallery refused  
9 the payment, and demanded Plaintiff sign a new contract stating she owed \$2,500.00. (*See id.*)

10 21. Plaintiffs refused to negotiate the terms of the initial contract and would not sign  
11 the new contract for \$2,500.00. (*See id.*)

12 22. The vehicle was wrongfully repossessed by Defendant on July 5, 2012. (*See id.*)

13 23. Plaintiffs were not in default when the vehicle was repossessed on July 5, 2012.  
14 (*See id.*)

15 24. By the terms of the August 17, 2011 contract, Plaintiffs were to have paid  
16 \$7,898.88 with their July 2012 payment (718.08 x 11 months September through July). (*See id.*  
17 and Exhibit B RISC)

18 25. By July 2012, Plaintiffs paid \$8,200 for the vehicle with their April 4, 2012  
19 payment (\$1,000 + \$1,000 + \$1,000 + \$500 + \$4,200 + \$500 = \$8,200). (*See id.*)

20 26. Plaintiffs were ahead with their payments, and not in default on July 5, 2012.  
21 (*See id.*)

22 27. Defendant consistently accepted late payments. (*See id.* and Exhibit C – receipts)



## V. LEGAL ARGUMENT

### 1. Violations of the Truth in Lending Act (TILA)

Congress enacted TILA “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.” 15 U.S.C. § 1601. To effectuate TILA's purpose, a court must construe “the Act's provisions liberally in favor of the consumer” and require absolute compliance by creditors. *In re Ferrell*, 539 F.3d 1186, 1189 (9th Cir.2008); *see also Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir.1989) (“Even technical or minor violations of the TILA impose liability on the creditor.”).

The Defendants violated the Truth in Lending Act (“TILA”) by failing to disclose the interest rate, and. amount financed in the Contract at issue. (Exhibit B The transaction of August 17, 2011, was a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z, 12 C.F.R. § 226.2, because:

- i. Defendant offered to extend credit to Plaintiff, who is a “consumer,” as that term is defined in 12 C.F.R. § 226.2(a)(11). 12 C.F.R. § 226.1(c)(1)(i);
- ii. Defendant “regularly” extends credit to consumers, as that term is defined in 12 C.F.R. § 226.2(17)(v). 12 C.F.R. § 226.1(c)(1)(ii);
- iii. The credit is subject to a “finance charge,” as that term is defined in 12 C.F.R. § 226.4(a), or is payable by a written agreement in more than four installments. 12 C.F.R. § 226.1(c)(1)(iii); and
- iv. The credit is primarily for personal, family, or household purposes. 12 C.F.R. § 226.1(c)(1)(iv).

Defendant, in the contract dated August 17, 2011, failed to disclose the APR in violation of TILA and Regulation Z. (See Exhibit B Contract). TILA and Regulation Z have been violated in the following respects:



- i. The loan agreement fails to disclose the APR of 52.662% and include a brief description, such as “the cost of your credit as a yearly rate,” in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z, § 226.18(e);
- ii. The loan agreement fails to disclose the “amount financed,” using that term, and a brief description such as “the amount of credit provided to you or on your behalf,” in violation of 15 U.S.C. § 1638(a)(2) and Regulation Z, § 226.18(b).
- iii. The loan agreement fails to disclose the “finance charge,” using that term, and a brief description such as “the dollar amount the credit will cost you,” in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z, § 226.18(d).
- iv. The loan agreement fails to make the terms “finance charge” and “annual percentage rate” more conspicuous than any other disclosure, in violation of 15 U.S.C. § 1632(a) and Regulation Z, § 226.17(a)(2);
- v. The loan agreement fails to provide a statement of the consumer’s right to obtain, upon request, a written itemization of the amount financed, or fails to automatically disclose itemization of the amount financed, including amounts paid to other persons by the creditor on the consumer’s behalf, with those persons identified, in violation of 15 U.S.C. § 1638(a)(2)(B) and Regulation Z, § 226.18(c); and
- v. The loan agreement fails to include a separate written itemization of the amount financed, including any amounts paid to other persons by the creditor on the consumer’s behalf, specifically, public officials or government agencies, as required by Reg. Z, § 226.18(c)(1)(iii).

This is precisely the type of RISC that TILA was enacted to prevent dealers from using on unsophisticated consumers. The finance charge is in small print and does not state a percentage rate. Plaintiff both state they would not have purchased the vehicle at an exorbitant interest rate of 52.662%. (Exhibit A affidavits of Plaintiffs) The contract buries the finance charge information and with that fails to inform the consumers what interest rate they are being charged. TILA is about disclosure and this contract lacks disclosure. The legislative history from Congress's enactment and amendment of TILA is consistent with the language of the statute limiting its scope to disclosure. *See* S.Rep. No. 392, at 1 (1967) (“The basic purpose of the truth in lending bill is to provide a full disclosure of credit charges to the American consumer. The bill does not in any way regulate the credit industry....”); H.R.Rep. No. 1040 (1967), *as reprinted in*

1 1968 U.S.C.C.A.N. 1962, 1963 (“Title I, the truth in lending and credit advertising title, [does  
 2 not] regulate[ ] the credit industry.... It provides for full disclosure of credit charges, rather than  
 3 regulation of the terms and conditions under which credit may be extended.”); S. Rep. 100-259,  
 4 at 3 (1987), *as reprinted in* 1987 U.S.C.C.A.N. 3936, 3938 (“The Committee believes that early  
 5 disclosure of relevant cost information, coupled with widespread publication of the costs of  
 6 different cards, will help remedy the problem of enabling consumers to shop around for the best  
 7 cards.”).

8  
 9 Summary judgment must be granted to the Plaintiffs as the RISC clearly violates TILA.  
 10 The RISC fails to state the exorbitant interest charged to the consumers in this matter, which is a  
 11 clear violation of TILA.

## 12 **2. Defendants violated of NRS Chapter 97, Retail Installment Sales of Goods and Services**

13 Nevada has specific laws regarding what is a retail sales installment contract, and by  
 14 statute specifically states what a RISC for a used car must contain. In this case the contract is  
 15 clearly a RISC contract.  
 16

17 NRS 97.115 defines a “retail installment transaction” as a:

18 . . . transaction in which a retail buyer purchases goods . . . from a  
 19 retail seller pursuant to a retail installment contract . . . which *may*  
 20 provide for a finance charge and under which the buyer agrees to  
 pay the total of payments in one or more installments.

21 (Emphasis added).

22 Because the August 17, 2011 Contract included a finance charge and was payable in one or more  
 23 installments, the August 17, 2011 Contract was a “retail installment” transaction as defined in  
 24 NRS 97.115.

25 Defendant is a seller as defined by statute.

26 NRS 97.125(1)(c) defines a “retail seller” or “seller” as:

27 A person, other than a financial institution, who regularly extends,  
 28

1           whether in connection with sales or leases of goods or services,  
2           credit which is payable by agreement in more than four  
3           installments . . .

4           Under the August 17, 2011 Contract, Plaintiff was required to pay Defendant fifteen (15)  
5           installments of \$718.08. Therefore, Defendant is a retail seller, as defined in NRS 97.125(1)(c).

6           The provisions of NRS Chapter 97 are exclusive, and govern all retail installment  
7           transactions included in NRS Chapter 97. *See* NRS 97.285. Contracts for the sale of vehicles  
8           are included in NRS Chapter 97. *See* NRS 97.297 to 97.299, inclusive. The transaction of  
9           August 17, 2011, involved the taking of a security interest to secure part of the purchase price of  
10          the vehicle; an application for credit was made through Defendant as the seller of the vehicle;  
11          Defendant is a “dealer” as defined by NRS 482.020, and; the sale was not a commercial  
12          transaction.

13          Defendant violated NRS 97.299 by failing to use the form prescribed by the  
14          Commissioner of Financial Institutions (found in NAC 97.110) for contracts to be used in the  
15          sale of vehicles if the sale involves the taking of a security interest to secure all or part of the  
16          purchase price of the vehicle, the application for credit is made to or through the seller of the  
17          vehicle, the seller is a dealer, and the sale is not a commercial transaction. Specifically,  
18          Defendant violated NRS 97.185(1)(e) by failing to include the aggregate amount of official fees  
19          in the written contract. (*See* Exhibit B RISC) Defendant violated NRS 97.299(2)(d) by failing to  
20          include in the written contract a description of the method for calculating the unearned portion of  
21          the finance charge upon prepayment in full of the unpaid total of payments as prescribed in NRS  
22          97.255. (*See id.*)

23  
24  
25          If the Defendant has used the contract prescribed by law in NRS Chapter 97, there would  
26          be no violations as the contract has a section for TILA disclosures, and the mandatory state  
27          disclosures. The form used in this case was from BPI Auto Forms. (Exhibit B- RISC) This is a  
28

generic form contract that does not comply with federal TILA disclosures or Nevada requirements for disclosures.

Summary judgment must be granted as the Defendant has failed to use the required form prescribed by the state of Nevada. As a result of these violations of Nevada law, Defendant is barred from the recovery of any finance charge, official fees, or any charge for delinquency or collection under or in connection with Plaintiff's written contract, pursuant to NRS 97.305. As a result of the foregoing violations of NRS Chapter 97, all Plaintiff owed Defendant under the August 17, 2011 Contract is the selling price of the vehicle \$7,189, plus sales tax of \$582.30 (8.1% sales tax on \$7,189.00), or \$7,771.30, thus pursuant to NRS 97.305 Plaintiff is entitled to damages of \$8,200 (total paid) - \$7,771.30 = \$428.70.

**3. Defendant violated NRS Chapter 97, Retail Installment Sales of Goods and Services and NRS 482.3277 Dealers: Certain purchasers and prospective purchasers to be allowed to view certain documents in Spanish language**

Nevada has specific laws regarding what is a retail sales installment contract, and by statute specifically states what a RISC for a used car must contain. In this case the contract is clearly a RISC contract.

NRS 97.115 defines a "retail installment transaction" as a:

. . . transaction in which a retail buyer purchases goods . . . from a retail seller pursuant to a retail installment contract . . . which *may* provide for a finance charge and under which the buyer agrees to pay the total of payments in one or more installments.

(Emphasis added).

Because the August 17, 2011 Contract included a finance charge and was payable in one or more installments, the August 17, 2011 Contract was a "retail installment" transaction as defined in NRS 97.115.

1 Defendant is a seller as defined by statute.

2 NRS 97.125(1)(c) defines a “retail seller” or “seller” as:

3 A person, other than a financial institution, who regularly extends,  
4 whether in connection with sales or leases of goods or services,  
5 credit which is payable by agreement in more than four  
installments . . .

6 Under the August 17, 2011 Contract, Plaintiff was required to pay Defendant fifteen (15)  
7 installments of \$718.08. Therefore, Defendant is a retail seller, as defined in NRS 97.125(1)(c).

8 The provisions of NRS Chapter 97 are exclusive, and govern all retail installment  
9 transactions included in NRS Chapter 97. *See* NRS 97.285. Contracts for the sale of vehicles  
10 are included in NRS Chapter 97. *See* NRS 97.297 to 97.299, inclusive. The transaction of  
11 August 17, 2011, involved the taking of a security interest to secure part of the purchase price of  
12 the vehicle; an application for credit was made through Defendant as the seller of the vehicle;  
13 Defendant is a “dealer” as defined by NRS 482.020, and; the sale was not a commercial  
14 transaction. Defendant violated NRS 482.3277 by failing to provide the retail installment sales  
15 contract in Spanish.  
16

17 The sale was done in poor Spanish by the sales person’s assistant as the Plaintiffs are  
18 Spanish speaking. (*See* Exhibit A- Affidavits of Plaintiffs) The Plaintiffs asked for the retail  
19 installment sales contract in Spanish. (*See id.*) Defendants did not provide the retail installment  
20 sales contract in Spanish. (*See id.*) The Plaintiff were unable to read the contract they signed,  
21 and relied upon the representations made by the Defendant’s employee. NRS 482.3277 was  
22 enacted to protect Spanish speaking consumers. Additionally, if the RISC was the one mandated  
23 by Nevada law the monetary amounts of the finance charge and percent would have been clear,  
24 even to a Spanish speaker.  
25

26 Summary judgment must be granted for failure to provide the RISC in Spanish. As a  
27 result of the foregoing violations of NRS Chapter 97, all Plaintiff owed Defendant under the  
28

1 August 17, 2011 Contract is the selling price of the vehicle \$7,189, plus sales tax of \$582.30  
 2 (8.1% sales tax on \$7,189.00), or \$7,771.30, thus pursuant to NRS 97.305 Plaintiff is entitled to  
 3 damages of \$8,200 (total paid) - \$7,771.30 = \$428.70.

### 4 **3. Defendant Fraudulently Made a Material Misrepresentation**

5 “[I]f a party's manifestation of assent to contract was induced by either a fraudulent or a  
 6 material misrepresentation by the other party, upon which the recipient was justified in relying,  
 7 the contract was voidable by the recipient.” *See Robinson v. State Farm Mutual Auto. Ins. Co.*,  
 8 137 Idaho 173, 45 P.3d 829, 836 (2002). In order to succeed on a claim of fraudulent  
 9 misrepresentation in Nevada, a plaintiff must show: (1) that the defendant made a false  
 10 misrepresentation of material fact; (2) the defendant knew or believed the representation was  
 11 false; (3) the defendant intended to induce the plaintiff to act or refrain from acting in reliance  
 12 upon the misrepresentation; (4) the plaintiff justifiably relied on the misrepresentation; and (5)  
 13 the plaintiffs were damaged by such reliance. *Albert H. Wohlers & Co. v. Bartgis*, 969 P.2d 949,  
 14 957–58 (Nev.1998). “With respect to the false representation element, the suppression or  
 15 omission of a material fact which a party is bound in good faith to disclose is equivalent to a  
 16 false representation, since it constitutes an indirect representation that such fact does not exist.”  
 17 *Nelson v. Heer*, 163 P.3d 420, 426 (Nev.2007) (internal quotation marks omitted). TILA  
 18 requires, among other things, disclosure of finance charges and the annual percentage rate. *See*  
 19 15 U.S.C. § 1638(a); 12 C.F.R. § 226.18. The essential terms of a loan agreement are “the  
 20 amount of the loan, the rate of interest, the terms of repayment, applicable loan fees and  
 21 charges.” *Kruse v. Bank of America*, 202 Cal.App.3d 38, 60, 248 Cal.Rptr. 217 (1988), *cert.*  
 22 *denied*, 109 S.Ct. 87 (1989).  
 23  
 24  
 25

26 On August 17, 2011, Defendant made a false representation, through omission to  
 27 Plaintiffs by failing to provide disclosures required under state and federal law as argued above.  
 28



1 Defendant is required by TILA to provide the Plaintiffs with the APR on the retail installment  
2 sales contract. Defendant as a dealer has the responsibility to provide TILA information, and  
3 specifically the APR of the retail installment sales contract. Defendant failed to disclose the true  
4 APR of 52.662% to the Plaintiffs. (*See Exhibit B- Contract*) Defendant knew it was omitting  
5 the APR based upon the face of the contract, as no APR is listed. (*See id.*)

6 The interest rate on the car loan is material to the contract and an essential term of the  
7 contract. It is beyond dispute that defendant used a form contracts when it transacted with the  
8 Defendants, and that the form contract lacked the required disclosure. (*See Exhibit B- contract.*)  
9 As no material facts remain in dispute concerning defendant's use of form contracts that withheld  
10 relevant information from consumers and violated the TILA statute, the Court should find as a  
11 matter of law that defendant is liable to plaintiff for violation of TILA.  
12

13 Defendant's misrepresentation of the APR on the August 17, 2011 Contract was designed  
14 to induce Plaintiffs to act and/or refrain from acting, specifically, Defendant intended to induce  
15 Plaintiffs to enter into the August, 2011 Contract and to refrain from leaving Defendant's used  
16 car lot and taking their business elsewhere. Plaintiffs are unsophisticated consumers who  
17 justifiably relied upon Defendant's false representation through lack of disclosures. (*See Exhibit*  
18 *A Plaintiffs Affidavits*) The Plaintiffs never would have purchased the vehicle if the true APR of  
19 52.662% had been disclosed on the face of the contract, as is required by law. (*See Exhibit A*  
20 *Plaintiffs Affidavits*) If the true APR of over 50% was disclosed the Plaintiffs would have  
21 realized that they were essentially overpaying for the vehicle. Without the disclosure the  
22 Plaintiffs were unaware of the true interest rate and the profit that the dealership was making on  
23 the RISC.  
24

25 Plaintiffs sustained damages as a result of their reliance on Defendant's false  
26 representations through omission, specifically, but for Defendant's failure to disclose that the  
27  
28



1 APR on the August 17, 2011 Contract was 52.662%, Plaintiff would not have entered into the  
2 August 17, 2011 Contract if they were aware of the 52,662% APR. (*See id.*) Additionally, the  
3 Plaintiffs have overpaid on the contract by paying such an exorbitant interest rate.

4 Summary judgment must be granted as to the material false representation. To date,  
5 Plaintiff has suffered actual damages of no less than \$8,200.00, which is the amount Plaintiffs  
6 have paid as a result of Defendant's fraudulent misrepresentation. In the alternative, as a result  
7 of Defendant's fraudulent misrepresentation, Plaintiff is entitled to equitable rescission of the  
8 August 17, 2011 Contract through a declaration that the contract is void and an injunction  
9 mandating that Defendant return Plaintiffs as closely as possible to the position they was in prior  
10 to entering into the August 17, 2011 Contract. Summary judgment should be granted material  
11 misrepresentation.  
12  
13

#### 14 **5. Defendant Violated NRS Chapter 598, Deceptive Trade Practices**

15 NRS 598.0923(2) states that a person engages in a "deceptive trade practice" if, he "fails  
16 to disclose a material fact in connection with the sale or lease of goods or services." On August  
17 17, 2011, Defendant falsely represented that the APR on the August 17, 2011, by failing to  
18 disclose that the APR is 52.662% , thereby making a false representation through omission in  
19 violation of NRS 598.0915(15).NRS 598.0923(3) states that a person engages in a deceptive  
20 trade practice when he or she violates a state or federal statute or regulation relating to the sale or  
21 lease of goods or services. (*See Exhibit B- Contract*) On July 22, 2011, as outlined above,  
22 Defendant violated the federal Truth in Lending Act, and NRS Chapter 97, thereby violating  
23 state and federal statutes and regulations relating to the sale of goods in violation of NRS  
24 598.0923(3).  
25  
26

27 ///  
28

1 By violating NRS 598.0923(2) & (3), Defendant has engaged in “consumer fraud” as that  
2 term is defined by NRS 41.600(2)(e). Pursuant to NRS 41.600(3)(a), Plaintiffs are entitled to  
3 recover actual damages of no less than \$8,200, which is the total cost paid under the contract.

4  
5 Summary judgment must be granted as the contract on its face clearly does not state the  
6 interest rate. (*See Exhibit B- Contract*) By failing to disclose the interest rate, the deception was  
7 done. And if the proper contract had been utilized, there would be no issue as it has delineated  
8 sections for the interest rate and other financial information to be stated. (*See NAC 97*)

9  
10 **6. Defendants Converted the Personal Property of Plaintiffs**

11 In order to show conversion, Plaintiffs must prove that Defendant “wrongfully exerted  
12 [dominion] over personal property in denial of, or inconsistent with, title or rights therein or in  
13 derogation, exclusion or defiance of such rights.” *See Edwards v. Emperor's Garden Rest.*, 122  
14 Nev. 317, 328, 130 P.3d 1280, 1287 (2006) (citing *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413  
15 (1958)). While conversion requires a physical act of dominion over personal property, liability for  
16 conversion is predicated upon “general intent, which does not require wrongful intent and is not  
17 excused by care, good faith, or lack of knowledge.” *Evans v. Dean Witter Reynolds, Inc.*, 116  
18 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

19  
20 On July 5, 2012 Plaintiffs were in full compliance with the terms of their August 17,  
21 2011 contract, including current on their payments, in fact Plaintiffs were ahead on their  
22 contractual payment schedule on July 5, 2012. (Exhibit C) Plaintiffs were to have paid  
23 \$7,898.88 with their July 2012 payment (718.08 x 11 months September through July), however  
24 they had already paid \$8,200 on the contract at that date. Plaintiffs paid \$8,200 in installment  
25 payments for the vehicle with their April 4, 2012 payment (\$1,000 + \$1,000 + \$1,000 + \$500 +  
26 \$4,200 + \$500 = \$8,200). Plaintiffs were ahead of their contractual payment schedule, and not  
27  
28

1 in default on July 5, 2012 when the vehicle was repossessed. The repossession on July 5, 2012  
2 was unlawful as the Plaintiffs were not behind in their payments but rather were ahead of their  
3 payment schedule.

4 On July 5, 2013, by repossessing Plaintiffs' vehicle Defendant committed a distinct act of  
5 dominion wrongfully exerted over Plaintiffs' personal property, i.e. 2004 Nissan Xterra, (VIN  
6 5N1ED28T44C66010), in denial of, or inconsistent with Plaintiffs' title or rights therein, and  
7 Defendants acts were in derogation, exclusion, or defiance of Plaintiffs' title or rights in the  
8 personal property. The repossession and conversion of the personal property is clear and  
9 unmistakable, and Plaintiffs are entitled to summary judgment on the matter.  
10

11 **8. Defendants Violated of NRS Chapter 104: Uniform Commercial Code**

12 NRS 104.1304 imposes the obligation of good faith in the performance of every contract  
13 or duty within Chapter 104. NRS 104.1201(t) provides that "good faith" means honesty-in-fact  
14 and the observance of reasonable commercial standards of fair dealing. Defendant failed and  
15 refused to act honestly and to observe reasonable commercial standards of fair dealing,  
16 including, but not limited to: failing to adhere to TILA regulations, i.e. failing to state the APR as  
17 52.662% and repossessing the vehicle when the Plaintiff was not in default. NRS 104.9611(2)  
18 requires a secured party to send a debtor a notification before disposition of collateral.  
19

20 Specifically, NRS 104.9614(1)(a) requires that notification to the debtor must contain the  
21 information required by NRS 104.9613(1), namely:

- 22 i. The method of intended disposition;
- 23 ii. Statement that the debtor is entitled to an accounting of the unpaid indebtedness  
24 and the charge, if any, for the accounting; and
- 25 iii. The time and place of a public disposition or the time after which any other  
26 disposition is to be made.  
27  
28

1 Defendant failed to provide Plaintiffs with a notification before disposition of collateral  
2 that contained the information required by NRS 104.9613(1). This did not occur in this matter.  
3 Furthermore, the law provides that the debtor has the right to redeem the collateral at any time  
4 before the sale is consummated. NRS 104.9623(3)(b). *See also* the safe harbor notice form  
5 contained in NRS 104.9614(3), stating: "You can get the property back at any time before we  
6 sell it . . . ."

7 Defendant never gave notice to Plaintiffs of the intended disposition pursuant to NRS  
8 104.9623(3)(b) or NRS 104.9613. NRS 104.9610 requires that every aspect of disposition of  
9 collateral be commercially reasonable. Notice violations, or failure to provide notice, alone  
10 render a disposition commercially unreasonable. Based upon the clear violations of state law,  
11 the Plaintiffs are entitled to summary judgment.  
12

### 13 9. Breach of Contract

14 Plaintiffs and Defendant entered into a valid and existing contract on August 17, 2011.  
15 (Exhibit B – contract) Defendant established a pattern and practice of accepting late payments  
16 from Plaintiffs without exercising its right to repossess under the Contract. Under Nevada law,  
17 ". . . a secured party who has not insisted upon strict compliance in the past, who has accepted  
18 late payments as a matter of course, [m]ust, before he may validly rely upon such a clause to  
19 declare default and effect repossession, [g]ive notice to the debtor (lessee) that strict compliance  
20 with the terms of the contract will be demanded henceforth if repossession is to be avoided."  
21 *Nevada National Bank v. Huff*, 94 Nev. 506, 512, 582 P.2d 364, 369 (1978) (*citing Ford Motor*  
22 *Credit Company v. Waters*, 273 So.2d 96 (Fla.App., 1973); *Fontaine v. Industrial National Bank*  
23 *of Rhode Island*, 111 R.I. 6, 298 A.2d 521, 11 U.C.C. Rptr, 1096 (1973); *Kupka v. Morey*, 541  
24 P.2d 740 (Alaska, 1975); and *Varela v. Wells Fargo Bank*, 15 Cal. App. 741, 93 Cal. Rptr. 428  
25 (Cal.App., 1971)).  
26  
27  
28

#### IV. CONCLUSION

Page 20 of 21

1 were ahead on their contract payments and the dealership consistently accepted late payments  
2 under the contract. Therefore, summary judgment should be granted for the Plaintiffs.

3 DATED this 29<sup>th</sup> day of March, 2013.

4 **LEGAL AID CENTER OF**  
5 **SOUTHERN NEVADA, INC.**

6 /s/ JILL C. DAVIS, ESQ.  
7 JILL C. DAVIS, Esq.  
8 Nevada Bar No. 8418  
9 **LEGAL AID CENTER OF**  
10 **SOUTHERN NEVADA, INC.**  
11 725 E. Charleston Blvd  
12 Las Vegas, NV 89104  
13 Telephone: (702) 386-1070 x 1452  
14 Facsimile: (702) 388-1642  
15 Attorneys for Plaintiffs  
16  
17  
18  
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23  
24  
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# EXHIBIT A





1 (hereinafter, "Defendant"), used car lot and saw a 2004 Nissan Xterra, (VIN  
2 5N1ED28T44C66010) (hereinafter, "the vehicle").

3 4. The sales person did not speak Spanish, but I spoke to an assistant who spoke a  
4 little Spanish and was presented with a retail installment sales contract in English.

5 5. I have limited ability to understand, speak or read English.

6 6. I asked for the contract in Spanish but was not provided a retail installment sales  
7 contract in Spanish.

8 7. A true and correct copy of the retail installment sales contract is attached to my  
9 affidavit and motion for summary judgment.

10 8. The contract lists the vehicle's sale price as \$7,198.00, sales tax of \$582.30 for a  
11 total of \$7,771.30 and a finance charge of \$3,000.00 for a total price of \$10,771.30.

12 9. We paid \$3500.00 in cash as a down payment. Auto Gallery refused to give us a  
13 receipt. They said they did this so that they would not have to pay more sales tax.

14 10. The contract states that there will be 15 monthly payments of \$718.20 beginning on  
15 September 1, 2011.

16 11. The contract does not disclose the annual percentage rate, which is 52.662%.

17 12. I relied upon the contract, would not have purchased the vehicle if the annual  
18 percentage rate had been disclosed on the face of the contract.

19 13. The contract was not offered in Spanish to the Spanish speaking Plaintiff.

20 14. ISELA GOMEZ-DEHINES and I were both contributing to the payments for the  
21 vehicle.

22 15. On September 9, 2011, we made and Defendants accepted a late payment of  
23 \$1000.00 eight days late as evidenced by Receipt No. 163282, which indicates an outstanding  
24 balance of \$9,771.30.  
25  
26  
27  
28

1           16. On October 17, 2012 we made and Defendants accepted a late payment of  
2 \$1,000.00 seventeen days late as evidenced by Receipt No. 163292, which indicates the  
3 outstanding balance of \$8,771.30.

4           17. On November 18, 2011 we made and Defendants accepted a late payment of  
5 \$1,000.00 seventeen days late as evidenced by Receipt No. 163302, which indicates the  
6 outstanding balance of \$7,771.30.

7           18. On January 18, 2012 we made and Defendants accepted a late payment of  
8 \$500.00 seventeen days late as evidenced by receipt No. 163316.

9           19. On February 15, 2012 we made and Defendants accepted a late payment of  
10 \$4,200 fourteen days late as evidenced by receipt No. 163332, upon which this receipt reflects  
11 Auto Gallery's agreement to reduce the overall purchase price by \$1,500.00, indicating a balance  
12 due of \$1,571.30.

13           20. On April 4, 2012 we made and Auto Gallery accepted a late payment of \$500.00  
14 four days late.

15           21. We attempted to pay \$600.00 in May 2012, however Auto Gallery refused the  
16 payment, and demanded we sign a new contract stating we owed \$2,500.00.

17           22. We refused to negotiate the terms of the initial contract and would not sign the  
18 new contract for \$2,500.00, and went to Legal Aid Center of Southern Nevada.

19           23. The vehicle was wrongfully repossessed by Auto Gallery on July 5, 2012.

20           24. We were not in default when the vehicle was repossessed on July 5, 2012.

21           25. By the terms of the August 17, 2011 contract, we were to have paid \$7,898.88  
22 with our July 2012 payment (718.08 x 11 months September through July).

23           26. By July 2012, we paid \$8,200 for the vehicle with our April 4, 2012 payment  
24 (\$1,000 + \$1,000 + \$1,000 + \$500 + \$4,200 + \$500 = \$8,200).  
25  
26  
27  
28

27. We were ahead with our payments, and not in default on July 5, 2012.

28. Auto Gallery consistently accepted late payments.

FURTHER YOUR AFFIANT SAYETH NAUGHT

DATED this 1<sup>st</sup> day of February, 2013.



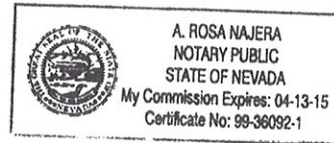
MARIA TREJO DE ZAMORA

SUBSCRIBED and SWORN to before me

this 1<sup>st</sup> day of February, 2013.

By: MARIA TREJO DE ZAMORA

NOTARY PUBLIC in and for said County and State



JILL C. DAVIS, ESQ.  
Nevada Bar No.: 8418  
MICHAEL R. JOE, ESQ.  
Nevada Bar No.: 10626  
**LEGAL AID CENTER OF  
SOUTHERN NEVADA, INC.**  
800 South Eighth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 386-1070 x 176  
Facsimile: (702) 388-1642  
[jdavis@lacsnsn.org](mailto:jdavis@lacsnsn.org)

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARIA TREJO DE ZAMORA and,  
ISELA GOMEZ-DEHINES

Case No.: 2:12-cv-01357-MMD-CWH

Plaintiff,

vs.

AUTO GALLERY, INC.

Defendant(s).

**AFFIDAVIT OF ISELA GOMEZ-DEHINES**

**STATE OF NEVADA        )**  
                                  **) ss:**  
**COUNTY OF CLARK        )**

I, ISELA GOMEZ-DEHINES, do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. I am a Plaintiff in the above titled action:
2. On or about August 17, 2011, Plaintiffs, myself, ISELA GOMEZ-DEHINES and MARIA TREJO DE ZAMORA became interested in purchasing a used vehicle on credit.

1           3.     On August 17, 2011, we traveled to Defendant, AUTO GALLERY, INC.,  
2 (hereinafter, "Defendant"), used car lot and saw a 2004 Nissan Xterra, (VIN  
3 5N1ED28T44C66010) (hereinafter, "the vehicle").

4           4.     The sales person did not speak Spanish, but I spoke to an assistant who spoke a  
5 little Spanish and was presented with a retail installment sales contract in English.  
6

7           5.     I have limited ability to understand, speak or read English.

8           6.     I asked for the contract in Spanish but was not provided a retail installment sales  
9 contract in Spanish.

10          7.     A true and correct copy of the retail installment sales contract is attached to my  
11 affidavit and motion for summary judgment.  
12

13          8.     The contract lists the vehicle's sale price as \$7,198.00, sales tax of \$582.30 for a  
14 total of \$7,771.30 and a finance charge of \$3,000.00 for a total price of \$10,771.30.

15          9.     We paid \$3500.00 in cash as a down payment. Auto Gallery refused to give us a  
16 receipt. They said they did this so that they would not have to pay more sales tax.  
17

18          10.    The contract states that there will be 15 monthly payments of \$718.20 beginning on  
19 September 1, 2011.

20          11.    The contract does not disclose the annual percentage rate, which is 52.662%.

21          12.    I relied upon the contract, would not have purchased the vehicle if the annual  
22 percentage rate had been disclosed on the face of the contract.  
23

24          13.    The contract was not offered in Spanish to the Spanish speaking Plaintiff.

25          14.    ISELA GOMEZ-DEHINES and I were both contributing to the payments for the  
26 vehicle.  
27  
28

1           15.    On September 9, 2011, we made and Defendants accepted a late payment of  
2 \$1000.00 eight days late as evidenced by Receipt No. 163282, which indicates an outstanding  
3 balance of \$9,771.30.

4           16.    On October 17, 2012 we made and Defendants accepted a late payment of  
5 \$1,000.00 seventeen days late as evidenced by Receipt No. 163292, which indicates the  
6 outstanding balance of \$8,771.30.

7  
8           17.    On November 18, 2011 we made and Defendants accepted a late payment of  
9 \$1,000.00 seventeen days late as evidenced by Receipt No. 163302, which indicates the  
10 outstanding balance of \$7,771.30.

11           18.    On January 18, 2012 we made and Defendants accepted a late payment of  
12 \$500.00 seventeen days late as evidenced by receipt No. 163316.

13  
14           19.    On February 15, 2012 we made and Defendants accepted a late payment of  
15 \$4,200 fourteen days late as evidenced by receipt No. 163332, upon which this receipt reflects  
16 Auto Gallery's agreement to reduce the overall purchase price by \$1,500.00, indicating a balance  
17 due of \$1,571.30.

18  
19           20.    On April 4, 2012 we made and Auto Gallery accepted a late payment of \$500.00  
20 four days late.

21           21.    We attempted to pay \$600.00 in May 2012, however Auto Gallery refused the  
22 payment, and demanded we sign a new contract stating we owed \$2,500.00.

23           22.    We refused to negotiate the terms of the initial contract and would not sign the  
24 new contract for \$2,500.00, and went to Legal Aid Center of Southern Nevada.

25  
26           23.    The vehicle was wrongfully repossessed by Auto Gallery on July 5, 2012.

27           24.    We were not in default when the vehicle was repossessed on July 5, 2012.  
28



1 25. By the terms of the August 17, 2011 contract, we were to have paid \$7,898.88  
2 with our July 2012 payment (718.08 x 11 months September through July).

3 26. By July 2012, we paid \$8,200 for the vehicle with our April 4, 2012 payment  
4 (\$1,000 + \$1,000 + \$1,000 + \$500 + \$4,200 + \$500 = \$8,200).

5 27. We were ahead with our payments, and not in default on July 5, 2012.

6 28. Auto Gallery consistently accepted late payments.

7  
8 FURTHER YOUR AFFIANT SAYETH NAUGHT

9 DATED this 1<sup>st</sup> day of February, 2013.

10  
11   
12 \_\_\_\_\_  
13 ISELA GOMEZ-DEHINES

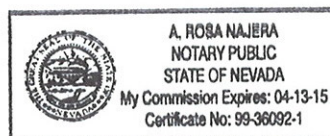
14 SUBSCRIBED and SWORN to before me

15 this 1<sup>st</sup> day of February, 2013.

16 By: ISELA GOMEZ-DEHINES

17 NOTARY PUBLIC in and for said County and State

18  
19   
20 \_\_\_\_\_



# EXHIBIT B



**MOTOR VEHICLE  
PURCHASE CONTRACT  
AND FEDERAL  
DISCLOSURE  
STATEMENT**

Seller Auto Gallery  
6155 W. Sahara Ave #214  
Las Vegas, NV 89146

Stock No. \_\_\_\_\_  
Source \_\_\_\_\_  
Salesperson Reynold  
Date 8/17/2011  
Bus. Phone 7022222005  
Res. Phone 7022222662  
Zip 89103

Purchaser NOHIA TREJO-DE-ZAMORA OR ISELA GOMEZ-DEHINE  
Address 3880 WYNNARD APT 410 City Las Vegas, NV

Enter my order for the automobile, accessories and insurance listed below under the terms and conditions set forth below on the reverse side.

NEW ☐ USED ☐ COLOR \_\_\_\_\_ TRIM \_\_\_\_\_ Approx. Del. Date \_\_\_\_\_ R.O.S. No. \_\_\_\_\_  
Year Cyl. Make NISSAN Model TERRA A.D. No. 1ED28T4HC666010 License No. \_\_\_\_\_ MOTOR VEHICLE  
OH 6 Odometer 97639 Type 4SUH Key No. \_\_\_\_\_ Tab. No. \_\_\_\_\_ \$ 7189

THIS CAR SOLD  
**AS-IS**  
UNLESS WRITTEN GUARANTEE IS GIVEN  
AT TIME OF SALE

REMARKS Car sold AS-IS no warranty  
1st payment of \$718.30  
15x 718.30 = 10771.50  
first payment DUE ON 8/10/11  
2nd - late payment fee \$100 each  
time will add to the balance

Legal Owner Auto Gallery

**INSURANCE REQUEST**

Purchaser requests the following insurance through Seller and understands that insurance will not be in force until accepted by the insurance carrier.

**WARNING-UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.**

S/S \_\_\_\_\_ BUYER Gross Premium  
\$ \_\_\_\_\_ Ded. Comp. Fire & Theft \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
\$ \_\_\_\_\_ Deductible Collision \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
Bodily Injury \$ \_\_\_\_\_ Limits \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
Property Damage \$ \_\_\_\_\_ Limits \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
Medical \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
Disability Insurance \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
Credit Life Insurance \_\_\_\_\_ Mos.; \$ \_\_\_\_\_  
If Purchaser furnishes own insurance list: Total Gross Premium \$ \_\_\_\_\_

INS. CO. \_\_\_\_\_

Agent/Broker \_\_\_\_\_

**NOTICE:** No person is required as a condition precedent to financing the purchase of a motor vehicle that any insurance be negotiated or purchased through a particular insurance agent or broker.

**CREDIT INSURANCE AUTHORIZATION**

Date \_\_\_\_\_

The undersigned voluntarily requests the following credit insurance for the term of the credit and understands that SUCH INSURANCE IS NOT REQUIRED AS A CONDITION TO THIS CREDIT EXTENSION.

☐ Credit Disability Insurance: Premium \$ \_\_\_\_\_  
☐ Credit Life Insurance Premium for one person \$ \_\_\_\_\_  
Premium for additional insured signed below \$ \_\_\_\_\_

The undersigned acknowledges disclosure of the cost of such insurance as shown herein and authorizes inclusion of the premiums in the balance payable under this obligation.

Purchaser \_\_\_\_\_ Age \_\_\_\_\_  
The undersigned requests credit life insurance as an additional insured:  
Co-purchaser \_\_\_\_\_ Age \_\_\_\_\_

**FILL OUT THIS SECTION IF USED CAR IS TO BE TRADED IN**

YEAR \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL \_\_\_\_\_  
I.D. No. \_\_\_\_\_ Tab. No. \_\_\_\_\_ License No. \_\_\_\_\_  
ODOMETER READING \_\_\_\_\_ AV \_\_\_\_\_  
BALANCE OWED TO \_\_\_\_\_  
ADDRESS \_\_\_\_\_

ACCESSORIES	\$	
MOTOR VEHICLE & ACCESSORIES	\$	<u>7189</u>
SALES TAX	\$	<u>582.30</u>
CASH PRICE	\$	<u>7771.50</u>
DOWNPAYMENT: Trade-In (A) \$		
Less Pay Off (B) \$		
TRADE-IN (A less B) (C) \$		
REC. # _____ Cash Downpayment Previously Paid (D) \$		
REC. # _____ Cash Downpayment Paid Herewith (E) \$		
REC. # _____ Deferred Cash Downpayment (F) \$		
CASH DOWNPAYMENT (D, E & F) (G) \$		
License \$		
Cert. of Title \$		
Reg. \$		
TOTAL \$		
ANNUAL PERCENTAGE RATE %		
DEFERRED PAYMENT PRICE (Total of 1, 4, 5, & 7) \$		
TOTAL OF PAYMENTS PAYABLE IN _____ INSTALLMENTS AS FOLLOWS:		
Deferred Cash Downpayment due _____ 20 _____ of \$ _____		
and 15 Weekly/Monthly Payments of \$ <u>718.30</u> each beginning <u>8/20/11</u>		
UNPAID BALANCE ON CASH PRICE	\$	<u>7771.50</u>
TOTAL GROSS INSURANCE PREMIUM	\$	<u>582.30</u>
DEPARTMENT OF MOTOR VEHICLES	\$	<u>582.30</u>
UNPAID BALANCE - AMOUNT FINANCED	\$	<u>7771.50</u>
FINANCE CHARGE	\$	<u>3000.00</u>
TOTAL OF PAYMENTS (6 + 7 + 2F)	\$	<u>10,771.50</u>

If any payment is more than twice the amount of a regular equal payment - IDENTIFY by writing "BALLOON PAYMENT". "BALLOON PAYMENTS" will not be refinanced.

**SECURITY INTEREST:** This Purchase Order is a security agreement covering the above described motor vehicle. Title to said property shall not pass to Purchaser until all sums payable, and other amounts due or to become due, are fully paid.

**Upon execution of a Security Agreement pursuant to this Purchase Order said agreement shall provide:**  
**PREPAYMENT:** In the event of prepayment in full, Purchaser is entitled to a partial refund of the unearned finance charge computed on the rule of 78. Where the finance charge, after computing the refund, amounts to less than \$25.00, there may be retained an amount equal to \$25.00. Any unpaid delinquency charges may be deducted from such refund. No refunds less than \$1.00.

**DEFAULT AND ACCELERATION:** If Purchaser defaults in the performance of his obligations hereunder, Seller at his option may accelerate the payment of the unpaid balance, and (1) sue for such balance, or (2) repossess said property.

**LATE CHARGES:** A late charge of 5% is payable on any payment past due 10 days.

Purchaser certifies that he is of legal age, and agrees to sign a Security Agreement according to the terms herein. In the event Payoff figures are more than quoted by Purchaser, Purchaser hereby agrees to pay this excess on demand. This order is subject to credit approval and is not binding unless signed by an authorized representative of Seller. All used cars or trucks sold "AS-IS" and without guarantee as to condition, year or model, unless otherwise specified in writing.

**PROCEEDS OF LOAN - FROM** \_\_\_\_\_  
Amount of Loan \_\_\_\_\_ FINANCE CHARGE \$ \_\_\_\_\_  
Total Amount of Loan \_\_\_\_\_ Payable in \_\_\_\_\_ Installments of \$ \_\_\_\_\_  
**NOTICE TO BUYER ON OUTSIDE LOAN-** Buyer may be required to pledge security for a loan, which security must be mutually agreed to by Buyer and Lender. Buyer will be obligated for the installment payments on BOTH THE CONDITIONAL SALES CONTRACT (SECURITY AGREEMENT) AND THE LOAN.

**NOTICE TO BUYER:** Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

SEE OTHER SIDE FOR ADDITIONAL TERMS AND CONDITIONS:

If you are buying a used vehicle with this contract, as indicated in the description of the vehicle above, federal regulation may require a special buyers guide to be displayed on the window. THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

Buyer acknowledges that: (1) before signing this agreement Buyer read both sides of this agreement and received a legible, completely filled-in copy of this agreement; and (2) Buyer has received a copy of every other document that Buyer signed during the contract negotiation.

Buyer Sign Here X

Buyer Sign Here X

Seller Auto Gallery



# EXHIBIT C

RECEIPT

DATE AUG/15/2011 No. 163281

RECEIVED FROM MOUWIR \$ 300<sup>00</sup>

three hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 2002 Mitsubishi Lancer

ACCOUNT	<u>1921</u>	<u>29</u>
PAYMENT	<u>300</u>	<u>29</u>
BAL. DUE	<u>1621</u>	<u>29</u>

☒ CASH  
☐ MONEY ORDER  
☐ CHECK  
☐ CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

1182

RECEIPT

DATE SEP/9/2011 No. 163282

RECEIVED FROM MARIA ZAMORA \$1000<sup>00</sup>

one thousand dollars DOLLARS

☐ FOR RENT  
☒ FOR 2004 NISSAN XTERRA Payment

ACCOUNT	<u>10771</u>	<u>30</u>
PAYMENT	<u>1000</u>	<u>30</u>
BAL. DUE	<u>9771</u>	<u>30</u>

☒ CASH  
☐ MONEY ORDER  
☐ CHECK  
☐ CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

1182

RECEIPT

DATE SEP/9/2011 No. 163283

RECEIVED FROM VAIDEE \$2900<sup>00</sup>

nine hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 2003 BMW 745i Payment

ACCOUNT	<u>2897</u>	<u>34</u>
PAYMENT	<u>900</u>	<u>34</u>
BAL. DUE	<u>1997</u>	<u>34</u>

☒ CASH  
☐ MONEY ORDER  
☐ CHECK  
☐ CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

1182

AG 00007

RECEIPT

DATE SEP/9/2011 No. 163284

RECEIVED FROM MICHAEL SHANE \$600<sup>00</sup>

six hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR Payment of 02 C 320

ACCOUNT	<u>2501</u>	<u>56</u>
PAYMENT	<u>600</u>	<u>56</u>

☒ CASH  
☐ MONEY ORDER

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

RECEIPT

DATE 9/26/2011 No. 163289

RECEIVED FROM IVAN AGUSTIN \$ 1000.00

one thousand DOLLARS

☐ FOR RENT  
☒ FOR Payment for 04 DODGE RAM

ACCOUNT	<u>3158.60</u>	<input checked="" type="radio"/> CASH	FROM	TO
PAYMENT	<u>1000.00</u>	<input type="radio"/> MONEY ORDER		
BAL. DUE	<u>2158.60</u>	<input type="radio"/> CHECK	BY	<u>[Signature]</u>
		<input type="radio"/> CREDIT CARD		

1182

RECEIPT

DATE 9/28/2011 No. 163290

RECEIVED FROM PIERCE NEAL HAMILTON \$ 500.00

five hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 2001 Chevy Monte Carlo SS VIN# 2G1WK15KX19337250

ACCOUNT	<u>6397.62</u>	<input checked="" type="radio"/> CASH	FROM	TO
PAYMENT	<u>500.00</u>	<input type="radio"/> MONEY ORDER	<u>Deposit Non Refundable</u>	
BAL. DUE	<u>5897.62</u>	<input type="radio"/> CHECK	BY	<u>[Signature]</u> <u>Paid By 9/29/2011</u>
		<input type="radio"/> CREDIT CARD	<u>Rest of the money</u>	

1182

RECEIPT

DATE 10/3/2011 No. 163291

RECEIVED FROM NEAL HAMILTON \$ 500.00

five hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR Payment for 2001 Chevy Monte Carlo SS

ACCOUNT	<u>2395.34</u>	<input checked="" type="radio"/> CASH	FROM	TO
PAYMENT	<u>500.00</u>	<input type="radio"/> MONEY ORDER		
BAL. DUE	<u>1895.34</u>	<input type="radio"/> CHECK	BY	<u>[Signature]</u>
		<input type="radio"/> CREDIT CARD		

1182

AG 00008

RECEIPT

DATE OCT 17/2011 No. 163292

RECEIVED FROM MARIA TREJO \$ 1000.00

one thousand dollars DOLLARS

☐ FOR RENT  
☒ FOR 2004 NISSAN XTERRA Payment

ACCOUNT	<u>9771.30</u>	<input checked="" type="radio"/> CASH	FROM	TO
PAYMENT	<u>1000.00</u>	<input type="radio"/> MONEY ORDER		
BAL. DUE	<u>8771.30</u>	<input type="radio"/> CHECK	BY	<u>[Signature]</u>
		<input type="radio"/> CREDIT CARD		

1182

RECEIPT

DATE 11/16/2011 No. 163301

RECEIVED FROM VAIDES MUNOZ \$400<sup>00</sup>

four hundred DOLLARS

☐ FOR RENT  
☒ FOR Bmw 745i Payment

ACCOUNT	<u>1997</u>	<u>34</u>	<input checked="" type="radio"/> CASH
PAYMENT	<u>400</u>	<u>00</u>	<input type="radio"/> MONEY ORDER
BAL. DUE	<u>1597</u>	<u>34</u>	<input type="radio"/> CHECK
			<input type="radio"/> CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

1182

RECEIPT

DATE 11/18/2011 No. 163302

RECEIVED FROM MARIA \$1000<sup>00</sup>

one thousand dollars DOLLARS

☐ FOR RENT  
☒ FOR 2004 XTERRA

ACCOUNT	<u>8771</u>	<u>30</u>	<input type="radio"/> CASH
PAYMENT	<u>1000</u>	<u>00</u>	<input type="radio"/> MONEY ORDER
BAL. DUE	<u>7,771</u>	<u>30</u>	<input checked="" type="radio"/> CHECK
			<input type="radio"/> CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

1182

RECEIPT

DATE 11/18/2011 No. 163303

RECEIVED FROM MICHAEL SHANE LYNCH \$1100<sup>00</sup>

one thousand one hundred DOLLARS

☐ FOR RENT  
☒ FOR Payment

ACCOUNT	<u>3261</u>	<u>56</u>	<input checked="" type="radio"/> CASH
PAYMENT	<u>1100</u>	<u>00</u>	<input type="radio"/> MONEY ORDER
BAL. DUE	<u>1161</u>	<u>56</u>	<input type="radio"/> CHECK
			<input type="radio"/> CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

1182

AG 00009

RECEIPT

DATE 11/23/2011 No. 163304

RECEIVED FROM MOU NIK \$350<sup>00</sup>

three hundred fifty dollars DOLLARS

☐ FOR RENT  
☒ FOR 1998 Lexus

ACCOUNT	<u>5290</u>	<u>11</u>	<input type="radio"/> CASH
PAYMENT	<u>350</u>	<u>00</u>	<input type="radio"/> MONEY ORDER
BAL. DUE	<u>101</u>	<u>11</u>	<input type="radio"/> CHECK
			<input type="radio"/> CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]



RECEIPT

DATE 12/29/11 No. 163313

RECEIVED FROM ~~VOID~~ \$           

\_\_\_\_\_ DOLLARS

☐ FOR RENT  
☐ FOR \_\_\_\_\_

ACCOUNT			<input type="radio"/> CASH	FROM _____ TO _____
PAYMENT			<input type="radio"/> MONEY ORDER	
BAL. DUE			<input type="radio"/> CHECK	BY _____
			<input type="radio"/> CREDIT CARD	

1182

RECEIPT

DATE 12/31/2011 No. 163314

RECEIVED FROM MARCO A. BRICENO \$ 200

Two hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 2001 Mercedes Deposit

ACCOUNT			<input type="radio"/> CASH	FROM <u>Deposit Non Refundable</u> TO _____
PAYMENT	<u>200</u>	<u>00</u>	<input type="radio"/> MONEY ORDER	
BAL. DUE			<input checked="" type="radio"/> CHECK	BY <u>[Signature]</u>
			<input type="radio"/> CREDIT CARD	

1182

RECEIPT

DATE Jan/4/2012 No. 163315

RECEIVED FROM JACQUARI CAVANAGH \$ 2500<sup>00</sup>

Twenty five hundred DOLLARS

☐ FOR RENT  
☒ FOR Deposit for 02CLK430

ACCOUNT	<u>3500</u>	<u>20</u>	<input checked="" type="radio"/> CASH	FROM <u>Deposit Non Refundable</u> TO _____
PAYMENT	<u>2500</u>	<u>00</u>	<input type="radio"/> MONEY ORDER	
BAL. DUE	<u>1000</u>	<u>00</u>	<input type="radio"/> CHECK	BY <u>[Signature]</u>
			<input type="radio"/> CREDIT CARD	

1182

AG 00010

RECEIPT

DATE Jan 18/2012 No. 163316

RECEIVED FROM MARIA \$ 500<sup>00</sup>

Five hundred DOLLARS

☐ FOR RENT  
☒ FOR Payment for chiteba

ACCOUNT	<u>7771</u>	<u>30</u>	<input checked="" type="radio"/> CASH	FROM <u>#105 Dec 01/18/2012</u> TO _____
PAYMENT	<u>500</u>	<u>00</u>	<input type="radio"/> MONEY ORDER	
BAL. DUE	<u>7771</u>	<u>30</u>	<input checked="" type="radio"/> CHECK	BY <u>[Signature]</u>
			<input type="radio"/> CREDIT CARD	

1182

RECEIPT

DATE 2/16/2012 No. 163329

RECEIVED FROM MARCO BRICENO \$ 661.38

Five hundred sixty one dollars and 38/100 DOLLARS

☐ FOR RENT  
☒ FOR Payment for 2001 Mercedes Benz S430

ACCOUNT	<u>8733</u>	<u>00</u>
PAYMENT	<u>661</u>	<u>38</u>
BAL. DUE	<u>8071.62</u>	

☐ CASH  
☐ MONEY ORDER  
☒ CHECK  
☐ CREDIT CARD

FROM check # 119 TO \_\_\_\_\_

BY [Signature]

2: edms 1182

RECEIPT

DATE FEB/18/2012 No. 163330

RECEIVED FROM HERRIOT CHIRE SSEL \$ 500.00

Five hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 2001 Honda Passport

ACCOUNT	<u>7674</u>	<u>01</u>
PAYMENT	<u>500</u>	<u>00</u>
BAL. DUE	<u>7174</u>	<u>01</u>

☒ CASH  
☐ MONEY ORDER  
☐ CHECK  
☐ CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

2: edms 1182

RECEIPT

DATE 2/14/2012 No. 163331

RECEIVED FROM ERICK \$ 300.00

Three hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 2001 LINCOLN U/S

ACCOUNT	<u>4365</u>	<u>91</u>
PAYMENT	<u>300</u>	<u>00</u>
BAL. DUE	<u>4065</u>	<u>91</u>

☒ CASH  
☐ MONEY ORDER  
☐ CHECK  
☐ CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

2: edms 1182

AG 00011

RECEIPT

DATE 2/15/2012 No. 163332

RECEIVED FROM MARIA \$ 420.00

Four hundred twenty dollars DOLLARS

☐ FOR RENT  
☒ FOR 2004 NISSAN XTERRA

ACCOUNT	<u>7271</u>	<u>30</u>
PAYMENT	<u>420</u>	<u>00</u>
BAL. DUE	<u>3271</u>	<u>30</u>

☒ CASH  
☐ MONEY ORDER  
☒ CHECK  
☐ CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY [Signature]

2: edms 1182

1500 off New Balance 15  
 4571.30 next payment 4571  
 DUE on Feb 19 2012  
 1500 payment DUE on Feb 19 2012

RECEIPT

DATE 4/4/2012 No. 163357

RECEIVED FROM MARIA \$ 500

Five hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR Payment For 2004 NISSAN XTERRA

ACCOUNT	<u>1571</u>	<u>30</u>	<input type="radio"/> CASH	FROM <u>\$500 TOTAL (\$400 cash \$100 check #122)</u> TO
PAYMENT	<u>500</u>	<u>00</u>	<input type="radio"/> MONEY ORDER	
BAL. DUE	<u>1071</u>	<u>30</u>	<input type="radio"/> CHECK	
			<input type="radio"/> CREDIT CARD	

BY [Signature]

1182

RECEIPT

DATE April/4/2012 No. 163358

RECEIVED FROM MARCO \$ 661.38

Six hundred sixty one dollars and 38/100 DOLLARS

☐ FOR RENT  
☒ FOR 01 Mercedes SL30

ACCOUNT	<u>7535</u>	<u>38</u>	<input type="radio"/> CASH	FROM _____ TO _____
PAYMENT	<u>661</u>	<u>38</u>	<input type="radio"/> MONEY ORDER	
BAL. DUE	<u>6873</u>	<u>66</u>	<input checked="" type="radio"/> CHECK	
			<input type="radio"/> CREDIT CARD	

BY [Signature]

1182

RECEIPT

DATE April/5/2012 No. 163359

RECEIVED FROM ALFONZO \$ 500

Five hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 03 Mercedes \$500 Down Payment

ACCOUNT	<u>1000</u>	<u>00</u>	<input type="radio"/> CASH	FROM _____ TO _____
PAYMENT	<u>500</u>	<u>00</u>	<input type="radio"/> MONEY ORDER	
BAL. DUE	<u>500</u>	<u>00</u>	<input type="radio"/> CHECK	
			<input type="radio"/> CREDIT CARD	

BY [Signature]

1182

AG 00012

RECEIPT

DATE 4/13/2012 No. 163360

RECEIVED FROM ALFONZO \$ 500

Five hundred dollars DOLLARS

☐ FOR RENT  
☒ FOR 03 Mercedes B

ACCOUNT	<u>500</u>	<u>00</u>	<input type="radio"/> CASH	FROM _____ TO _____
PAYMENT	<u>500</u>	<u>00</u>	<input type="radio"/> MONEY ORDER	
			<input type="radio"/> CHECK	
			<input type="radio"/> CREDIT CARD	

BY [Signature]